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12 TRACY AVILDSSEN AND STATE FARM MUTUAL AUTOMOBILE INSURANCE  
COMPANY, INC.

13  
14 **UNITED STATES DISTRICT COURT**  
15 **NORTHERN DISTRICT OF CALIFORNIA**

16  
17 JOHN BROSNAN,

18 Plaintiff,

19  
20 vs.

21  
22 TRACY AVILDSSEN aka TRACY BROOKS  
23 SWOPE, STATE FARM MUTUAL  
24 AUTOMOBILE INSURANCE COMPANY,  
INCORPORATED, and DOES 1 - 233,

25  
26  
27 Defendants.

Case No. CV 07-6438 EDL

**NOTICE OF MOTION AND  
MOTION TO DISMISS  
COMPLAINT AND TO  
STRIKE PUNITIVE DAMAGES  
CLAIM; MEMORANDUM OF  
POINTS AND AUTHORITIES;  
DECLARATIONS OF DENNIS  
B. KASS AND TRACY  
AVILDSSEN; EXHIBITS**

[F.R.C.P. 12(b)(1), (b)(3), (b)(6)  
and (f).]

*(Request for Judicial Notice and  
[Proposed] Order Filed  
Concurrently)*

Date: May 27, 2008  
Time: 9:00 a.m.  
Ctm: E

1  
2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE THAT on May 27, 2008, at 9:00 a.m., or as soon  
4 thereafter as the matter may be heard in Courtroom E of the above-captioned court,  
5 located at 450 Golden Gate Avenue, San Francisco, California, defendants TRACY  
6 AVILDSSEN AND STATE FARM MUTUAL AUTOMOBILE INSURANCE  
7 COMPANY, INC. ("State Farm") will move under Federal Rules of Civil Procedure,  
8 Rules 12(b)(1), 12(b)(3), and 12(b)(6) for dismissal of plaintiff's Complaint on the  
9 following grounds:

- 10 1. The Court does not have subject matter jurisdiction over this lawsuit  
11 (Rule 12(b)(1));
- 12 2. Even assuming the federal court had jurisdiction over this matter, the  
13 case was not filed in the proper venue (Rule 12(b)(3));
- 14 3. State Farm is not a proper defendant (Rule 12(b)(6));
- 15 4. The fourth claim should be dismissed because there is no separate claim  
16 for civil conspiracy under California law. (Rule 12(b)(6)).
- 17 5. The defamation claims are not adequately pled. (Rule 12(b)(6)).
- 18 6. The defamation claims are barred by California Civil Code § 47 (Rule  
19 12(b)(6)).

20 Defendant also moves, under Rule 12(f), to strike plaintiff's request for  
21 punitive damages and attorneys' fees as plaintiff has not alleged facts sufficient to  
22 state a claim for punitive damages against either defendant, nor has plaintiff alleged a  
23 legal basis for the recovery of attorneys' fees.

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1 This motion is based on this Notice of Motion, the attached Memorandum of  
2 Points and Authorities, the attached declaration of Dennis B. Kass and exhibits  
3 thereto, the attached declaration of Tracy Avildsen, the Request for Judicial Notice  
4 filed concurrently, and on such other and further matter as the Court may accept at  
5 the hearing on this motion.

6  
7 Dated: April 14, 2008

MANNING & MARDER  
KASS, ELLROD, RAMIREZ LLP

9  
10 By: S:\Patrick L. Hurley

11 Attorneys for Defendants,  
12 TRACY AVILDSSEN AND STATE  
13 FARM MUTUAL AUTOMOBILE  
14 INSURANCE COMPANY, INC.  
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## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **1. INTRODUCTION**

Plaintiff John Brosnan is a professional plaintiff who has been declared a vexatious litigant in California. (Ex. A.) That has not dissuaded plaintiff; he has simply switched forums and is continuing his abuse of the court system by now filing frivolous lawsuits in federal court. In 2007 and 2008, plaintiff has filed five lawsuits in the Northern District of California and two in the Central District of California. The current lawsuit is another example of plaintiff's inappropriate abuse of the courts. Plaintiff has also asserted eighteen insurance claims between late 2002 and 2007. (Ex. B.)

This case arises out of an automobile accident of disputed liability that happened in May 2007 in Beverly Hills, California involving two California citizens -- plaintiff and defendant Avildsen. Plaintiff is literally trying to turn that simple fender-bender into a federal case.

Plaintiff claims that Avildsen rear-ended him. In fact, plaintiff rolled back into Avildsen while both were stopped at a red light. A photograph of the "damage" to Ms. Avildsen's vehicle is attached as Exhibit C. Plaintiff seeks property damage only and is suing Ms. Avildsen and State Farm for denying liability for the accident.

The Court should grant the motion to dismiss because the Court lacks subject matter jurisdiction over the case. Plaintiff did not allege that the accident resulted in damages exceeding the amount-in-controversy requirement. Diversity is also lacking because, despite his representation, both plaintiff and Ms. Avildsen are citizens of California. In this lawsuit, and in all of the other federal lawsuits filed by plaintiff, he lists his address as Pleasant Hill, California. In one lawsuit, filed as John Brosnan dba Apex ISP Services, plaintiff identifies himself as "a California business located in Pleasant Hill, California." (See Ex. A to Request for Judicial Notice.) In addition, in several of his lawsuits, plaintiff's email address is listed as

1 john@cityofsanfrancisco.com.<sup>1</sup> (See Ex. B to Request for Judicial Notice.) A public  
2 record search shows that plaintiff owns property in California. (Ex. D). Likewise,  
3 the 510 area code for plaintiff's telephone number and the 925 area code for  
4 plaintiff's fax number listed in the caption are all for California. (See Complaint at  
5 page 1.) Finally, plaintiff filed a sufficient number of lawsuits in Contra Costa  
6 County Superior Court to be found to be a vexatious litigant. (Ex. A.)

7 Even if the Court had jurisdiction over this case, venue is improper. The  
8 accident happened in Beverly Hills which is in the Central District of California.  
9 Avildsen resides in Beverly Hills which is also in the Central District. Therefore,  
10 this case should be dismissed because it was not filed in the proper venue.

11 The Court should also dismiss the claims against State Farm without leave to  
12 amend. A defendant's insurer is not a proper defendant in a personal injury accident.  
13 See McKee v. Nat'l Union Fire Ins. Co., 15 Cal. App. 4th 282, 287 (1993). It is clear  
14 that plaintiff is attempting to circumvent this rule by filing meritless and frivolous  
15 defamation claims against Avildsen and her insurer simply because they dispute  
16 plaintiff's version of the accident.

17 The fourth claim for conspiracy to commit slander should be dismissed  
18 without leave to amend because there is no claim for civil conspiracy in California.  
19 The defamation claims are not adequately pled. Moreover, defendants are immune  
20 from suit for defamation based on the facts alleged in the complaint pursuant to  
21 California Civil Code § 47.

22 Finally, even if plaintiff could proceed with this lawsuit, the Court should  
23 strike the request for punitive damages and attorneys' fees in the Prayer because  
24 plaintiff has not alleged facts sufficient to entitle him to recover those categories of  
25 damages.

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27 <sup>1</sup>www.cityofsanfrancisco.com is a website called SF Station which describes itself as  
28 the Bay Area's "definitive online guide" to arts, entertainment, etc. Thus, it appears that  
plaintiff both lives and works in the San Francisco Bay Area.

1           **2.     STATEMENT OF FACTS**

2           According to the Complaint, plaintiff and defendant Avildsen were involved in  
3 a traffic accident on May 7, 2007 in Beverly Hills, California. Plaintiff claims that  
4 Avildsen hit him from behind. Avildsen contends that plaintiff rolled back into him.

5           Plaintiff alleges that he is a "Nevada resident" and that, on information and  
6 belief, Avildsen is a "New York resident." (Complaint at ¶¶ 3, 4.) Both of these  
7 contentions are incorrect. First, Avildsen is a resident of California. She has been a  
8 California resident since 1987 and resided in the Beverly Hills area both at the time  
9 of the subject accident and presently. (Avildsen Decl. at ¶2-3)

10          Second, despite his representation, it appears that plaintiff is also a citizen of  
11 California. The address listed on his Complaint is in Pleasant Hill, California. He  
12 has filed at least five other lawsuits in the Northern District listing the same address.  
13 (Ex. A to Request for Judicial Notice.) His email address in some of these lawsuits is  
14 listed as john@cityofsanfrancisco.com. (Ex. B to Request for Judicial Notice.) In  
15 John Brosnan dba Apex ISP Services v. Munger, et al, Case No. CV 07-0996,  
16 plaintiff identifies himself as "a California business located in Pleasant Hill,  
17 California." (Ex. A to Request for Judicial Notice.) Plaintiff owns property in  
18 California. (Ex. D.) Plaintiff has also filed a sufficient number of lawsuits in state  
19 court in California to be found to be a vexatious litigant in California. (Ex. A)

20          On December 21, 2007, plaintiff filed a Complaint in the Northern District  
21 naming Avildsen and her insurer as defendants based on alleged diversity  
22 jurisdiction. The Complaint contains claims for (1) property damage, (2) slander  
23 against Avildsen, (3) slander against State Farm, (4) conspiracy to commit slander  
24 against Avildsen and State Farm, and (5) libel against State Farm.

25  
26           **3.     THE COURT DOES NOT HAVE SUBJECT MATTER**  
27           **JURISDICTION OVER THIS MATTER**

28          Pursuant to 28 U.S.C. § 1332(a), a federal court has subject matter jurisdiction

1 over civil actions where "the matter in controversy exceeds the sum or value of  
2 \$75,000" and is between "citizens of different States." The Complaint fails to  
3 establish either basis for subject matter jurisdiction.

4 Plaintiff bears the burden of proving both diversity and the amount in  
5 controversy. In fact, even if a defendant has not challenged a plaintiff's allegations  
6 of diversity, "the court may still insist that the jurisdictional facts be established . . .  
7 by a preponderance of the evidence. McNutt v. General Motors Accept. Corp. of  
8 Indiana, 298 U.S. 178, 179 (1936).

9 "A motion to dismiss for lack of subject matter jurisdiction may either attack  
10 the allegations of the complaint (a 'facial attack'), or it may be made as a 'speaking  
11 motion' attacking the existence of subject matter jurisdiction in fact (a 'factual  
12 attack')." McMorgan & Co. v. First Cal. Mortgage Co., 916 F. Supp. 966, 973 (C.D.  
13 Cal. 1995). This motion is both a facial attack and a factual attack on subject matter  
14 jurisdiction.

15 Plaintiff has failed to allege that the amount-in-controversy exceeds \$75,000.  
16 That failure alone is sufficient for the Court to grant the motion to dismiss. Century  
17 Southwest Cable Television v. CIIF Assocs., 33 F.3d 1068, 1071 (9th Cir. 1994).

18 Plaintiff's allegations that he is a resident of Nevada and that, based on  
19 information and belief, Avildsen is a resident of New York, are insufficient to  
20 establish subject matter jurisdiction. Instead, plaintiff must allege, based on personal  
21 knowledge, that the parties are citizens, not residents, of different states. Bradford v.  
22 Mitchell Bros. Truck Lines, 217 F. Supp. 525, 526 (N.D. Cal. 1963); America's Best  
23 Inns, Inc. v. Best Inns of Abilene, L.P., 980 F.2d 1072, 1074 (7th Cir. 1992).

24 Plaintiff's allegations are not sufficient to establish diversity jurisdiction.

25 Not only are the allegations in the Complaint insufficient to establish subject  
26 matter jurisdiction but those allegations are also incorrect. Avildsen is neither a  
27 resident nor a citizen of New York. She currently lives in Beverly Hills, California  
28 and has lived in California since 1987. (Avildsen Decl. at ¶2-3.)



1 Similarly, it appears that plaintiff is a citizen of California. The address listed  
 2 on his Complaint is in Pleasant Hill, California. The phone numbers listed are  
 3 California area codes. He was working in the Los Angeles area at the time of the  
 4 accident, his numerous other lawsuits were filed in California, he claims to operate a  
 5 business in California and his email address is john@cityofsanfrancisco.com. He  
 6 owns property in California and has filed numerous lawsuit in California state court.  
 7 It is difficult to see how plaintiff could be anything other than a citizen of California.  
 8 The burden now shifts to plaintiff to establish diversity which he will be unable to  
 9 do. Therefore, the Court should grant the motion to dismiss under Rule 12(b)(1).

10  
 11 **4. EVEN IF PLAINTIFF COULD ESTABLISH SUBJECT MATTER**  
 12 **JURISDICTION, VENUE IS IMPROPER**

13 Even if plaintiff could establish diversity jurisdiction, the motion to dismiss  
 14 should be granted under Rule 12(b)(3) because the case was not filed in the proper  
 15 venue.

16 In a federal case where subject matter is based on diversity, venue is proper in  
 17 the following districts:

- 18 (1) If all defendants reside in the same state, a district where any defendant  
 19 resides; or
- 20 (2) a district in which a "substantial part of the events or omissions" on  
 21 which the claim is based occurred; or
- 22 (3) if there is no district in which the action may otherwise be brought, "a  
 23 district in which any defendant is subject to personal jurisdiction at the  
 24 time the action is commenced."

25 (28 USC § 1391(a)(1) - (a)(3)).

26 In this case, all of the defendants do not reside in the same state so subsection  
 27 section 1391(a)(1) does not apply nor does subsection (a)(3) because there is another  
 28 district in which the case may be brought -- the Central District of California. As set



1 forth in the Complaint, the accident that forms the basis for this case happened in  
2 Beverly Hills which is located in the Central District. Pursuant to section 1391(a)(2),  
3 venue is proper in the Central District, but not proper in the Northern District.  
4 Therefore, the motion to dismiss pursuant to Rule 12(b)(3) should be granted.

5  
6 **5. THE CLAIMS AGAINST STATE FARM SHOULD BE DISMISSED**  
7 **BECAUSE PLAINTIFF MAY NOT BRING A DIRECT ACTION**  
8 **AGAINST IT**

9 Even assuming subject matter and venue were proper, the claims against State  
10 Farm should be dismissed with prejudice because plaintiff cannot proceed with those  
11 claims as a matter of law.

12 Plaintiff is suing Avildsen based on the traffic accident detailed in the  
13 Complaint. State Farm provided Avildsen with car insurance. Pursuant to California  
14 law, a plaintiff may not sue a defendant's insurer directly unless and until the  
15 plaintiff obtains a judgment against the insured. McKee, 15 Cal. App. 4th at 287 ("a  
16 direct action against the insurer . . . is not allowable until after the claimant shall  
17 have secured a final judgment against the insured."). Plaintiff has not alleged a final  
18 judgment, nor could he in good faith. Plaintiff's claims against State Farm clearly  
19 violate this rule even though he has attempted to circumvent the rule it by claiming  
20 that State Farm defamed him simply because State Farm denied his claim. The Court  
21 should dismiss the claims against State Farm with prejudice.

22  
23 **6. CONSPIRACY DOES NOT STAND ALONE AS A CAUSE OF ACTION**

24 In the fourth claim, plaintiff alleges that Avildsen and State Farm conspired to  
25 slander him. (Complaint at ¶¶ 38-41.) This claim fails as a matter of law as the facts  
26 alleged do not state a valid claim under state law.

27 Under California law, "[a] civil conspiracy however atrocious, does not per se  
28 give rise to a cause of action unless a civil wrong has been committed resulting in

1 damage. . . . Conspiracy (the agreement) is ordinarily not actionable by itself. The  
 2 cause of action arises out of some wrongful act committed by one or more of the  
 3 conspirators, and if such a wrongful act is set forth the conspiracy averment is  
 4 unnecessary to the statement of a cause of action.” Unruh v. Truck Insurance  
 5 Exchange, 7 Cal.3d 616, 631 (1972) (citations omitted); Applied Equipment Corp. v.  
 6 Litton Saudi Arabia, Ltd., 7 Cal.4th 503, 510 (1994 (“Conspiracy is not a cause of  
 7 action”). The fourth claim for conspiracy to commit slander should be dismissed  
 8 without leave to amend.

9  
 10 **7. PLAINTIFF HAS FAILED TO ALLEGE SUFFICIENT FACTS TO**  
 11 **STATE CLAIMS FOR DEFAMATION AGAINST STATE FARM OR**  
 12 **AVILDSSEN**

13 Plaintiff has failed to allege any facts, as opposed to legal conclusions, to  
 14 support his defamation claims against defendants and, therefore, has failed to allege a  
 15 cause of action for libel or slander against defendants.

16 In ruling on a motion to dismiss, all factual allegations are taken as true and  
 17 construed in the light most favorable to the nonmoving party. Clegg v. Cult  
 18 Awareness Network, 18 F.3d 752, 754 (9th Cir. 1994). However, “the court is not  
 19 required to accept legal conclusions cast in the form of factual allegations if those  
 20 conclusions cannot reasonably be drawn from the facts alleged.” Id.

21 In this case, plaintiff’s defamation claims are simply legal conclusions with no  
 22 facts to support them. It is impossible for defendants to adequately respond to the  
 23 defamation claims without any facts about the alleged defamatory statements. For  
 24 instance, in Paragraph 35 of the Complaint, plaintiff alleges that State Farm “has  
 25 informed third parties that BROSNAN is at fault for the ACCIDENT.” This  
 26 allegation is not sufficient to state a claim for slander. Who did State Farm inform?  
 27 When? Through whom did State Farm act? What did State Farm’s representative  
 28 allegedly say? None of these material facts are set forth in the Complaint. The Court

1 should require that, at a minimum, plaintiff provide some basic facts to support his  
2 claims so that defendants can either answer those allegations or move to dismiss  
3 them. It is not sufficient for plaintiff to simply allege legal conclusions.

4  
5 **8. DEFENDANTS ARE IMMUNE FROM SUIT FOR DEFAMATION**  
6 **BASED ON THE ALLEGATIONS IN THE COMPLAINT**

7 Plaintiff claims that defendants defamed him by asserting that Avildsen was  
8 not at fault in the accident. (Complaint at ¶¶ 31-45.) It is obvious that plaintiff is  
9 using these defamation claims to try to discourage defendants from contradicting his  
10 version of the incident. This is not a proper use of, or basis for, defamation claims.  
11 In addition, defendants are immune from suit for defamation based on the allegations  
12 in the Complaint.

13 California Civil Code § 47(c) provides that a statement is privileged "where  
14 the communicator and the recipient have a common interest and the communication  
15 is of a kind reasonably calculated to protect or further that interest." Williams v.  
16 Taylor, 129 Cal. App. 3d 745, 751 (1982). Once the defense of privilege has been  
17 established, "plaintiff has the burden of defeating it by showing that the privilege has  
18 been abused or that malice existed on the part of the defendant." Deaile v. General  
19 Telephone Co. of Cal., 40 Cal. App. 3d 841, 849 (1974). Malice may not be inferred  
20 from the statements themselves. Civ. Code § 48.

21 In Cuenca v. Safeway San Francisco Employees Fed. Credit Union, 180 Cal.  
22 App. 3d 985, 996 (1986), allegations of improper conduct by plaintiff, the manager  
23 of a credit union, were investigated by the credit union's governing body. During the  
24 investigation, defendant and its agents made various oral statements and issued a  
25 written report which outlined suspicions of various acts of misconduct by plaintiff.  
26 Plaintiff sued for defamation based on the oral statements and written report.

27 The Cuenca court held that the written report and oral statements relating to  
28 the report were privileged because the subject of the report and statements "were all

1 directly relevant to plaintiff's fitness as manager of the Credit Union and as such  
2 were matters of direct interest to the Credit Union's supervisory committee, its  
3 auditor and its board of directors." Id. at 996.

4 The qualified privilege of section 47(c) applies to all of the defamatory  
5 statements alleged by plaintiff. All of the alleged statements were made in the  
6 context of Avildsen's conversations about a traffic accident with her insurer or the  
7 alleged statements by State Farm to others regarding the insurance claim. Therefore,  
8 the statements alleged by plaintiff related to a common interest of both the  
9 communicators and the recipients. See Deaile, 40 Cal.App.3d at p. 846.

10 In addition, it is obvious from the allegations in the Complaint that all of the  
11 statements alleged were of a kind reasonably calculated to protect or further a  
12 common interest of both the communicator and the recipient. The allegedly  
13 defamatory statements, which related to the traffic accident and Avildsen's  
14 insurance, are privileged under section 47(c). See Deaile, 40 Cal. App. 3d at 846.  
15 Plaintiff has not alleged that defendants acted with malice and, therefore, defendants  
16 are immune from suit for alleged defamation based on the allegations in the  
17 Complaint.

18  
19 **9. THE COURT SHOULD STRIKE THE PRAYER FOR PUNITIVE**  
20 **DAMAGES AND ATTORNEY'S FEES**

21 Pursuant to Federal Rules of Civil Procedure, Rule 12(f), the Court may strike  
22 any "redundant, immaterial, impertinent, or scandalous matter" in a Complaint. The  
23 Court should strike the prayer for punitive damages and attorneys' fees in the  
24 Complaint because plaintiff has not come close to alleging facts sufficient to entitle  
25 him to such damages.

26 In his prayer for relief, plaintiff seeks an award of one hundred million dollars  
27 in punitive damages against defendants. (Complaint at p. 5, lines 6-7.) The Court  
28 should strike the prayer for punitive damages on the grounds that plaintiff has failed

1 to allege any facts that would permit him to proceed on a claim for punitive damages  
2 against defendants.

3 Pursuant to California law, punitive damages may only be awarded where the  
4 plaintiff:

5 establishes by clear and convincing evidence that the defendant is guilty of (1)  
6 fraud, (2) oppression or (3) malice. Cal. Civ. Code § 3294(a). According to  
7 the definitions provided in section 3294(c), a plaintiff may not recover  
8 punitive damages unless the defendant acted with intent or engaged in  
"despicable conduct." "The adjective 'despicable' connotes conduct that is so  
vile, base, contemptible, miserable, wretched or loathsome that it would be  
looked down upon and despised by ordinary decent people."

9 Henry v. Lehman Commer. Paper, Inc., 471 F.3d 977, 998 (9th Cir. 2006) (footnote  
10 and citations omitted.)

11 Plaintiff has failed to allege any facts in the Complaint that would support a  
12 finding that either defendant acted with malice, fraud or oppression. Therefore, the  
13 prayer for punitive damages should be stricken.

14 Plaintiff also seeks attorneys' fees in the prayer for relief. (Complaint at p. 5,  
15 line 10.) "California has adopted the 'American' rule which requires each party to  
16 bear its own attorney fees in litigation, unless otherwise provided by contract or  
17 statute." Pac. Custom Pools v. Turner Constr. Co., 79 Cal. App. 4th 1254, 1268  
18 (2000). Although the parties may contract out of the American rule, plaintiff has  
19 alleged no contract between he and defendants that could provide contractual  
20 authority for any award of attorneys' fees. Similarly, plaintiff has failed to allege a  
21 statutory right to attorneys' fees. Therefore, the Court should strike the request for  
22 attorneys' fees in the prayer for relief.

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1           **10. CONCLUSION**

2           For all the foregoing reasons, the Court should grant the motion to dismiss  
3 without leave to amend.

4  
5 Dated: April 14, 2008

MANNING & MARDER  
KASS, ELLROD, RAMIREZ LLP

6  
7 By: S:\Patrick L. Hurley

8 Attorneys for Defendants,  
9 TRACY AVILDSON AND STATE  
10 FARM MUTUAL AUTOMOBILE  
11 INSURANCE COMPANY, INC.  
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## **DECLARATION**



**DECLARATION OF DENNIS B. KASS**

I, Dennis B. Kass, declare and state as follows:

1. I am an attorney at law, duly licensed to practice before all of the courts of the State of California and in this Court, and I am a partner in the law firm of Manning & Marder, Kass, Ellrod, Ramirez LLP, attorneys of record for defendants herein. I have personal knowledge of the facts stated herein, and if called as a witness, I could and would competently testify to them.

2. Attached hereto as Exhibit A is a true and correct copy of a partial list of vexatious litigants in California. My office obtained this list from the Administrative Office of the Court in California which, pursuant to California Code of Civil Procedure § 391.7(e), is required to maintain such a list.

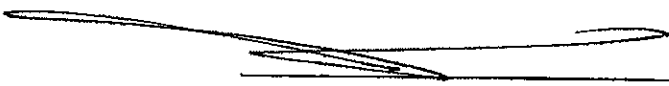
3. Attached hereto as Exhibit B is a list of insurance claim submitted by John Brosnan between 2002 and 2007.

4. Attached hereto as Exhibit C is a photograph showing the condition of the front of the car driven by defendant Avildsen at the time of the subject accident.

5. Attached hereto as Exhibit D is a true and correct copy of a public records search that was done at my direction showing that plaintiff John Brosnan owns property in California.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed April/4, 2008, at Los Angeles, California.

  
Dennis B. Kass

**DECLARATION**

**DECLARATION OF TRACY AVILDSSEN**

I, Tracy Avildsen, declare as follows:

1. I am over the age of 18 and have personal knowledge of the facts stated in this declaration. If called upon to do so I could and would testify as to the truth of the matters contained within this declaration.

2. Presently and at the time of the May 12, 2007 automobile accident which is the subject of plaintiff's complaint in this matter, I am a resident of California. I have been a resident of California since approximately 1987.

3. I presently reside in the Beverly Hills, California area and resided in the same area at the time of the accident which is the subject of plaintiff's Complaint in this matter.

4. I have not been served with a Summons and Complaint from the plaintiff.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 4 day of April, 2008 in Beverly Hills, California.

  
\_\_\_\_\_  
TRACY AVILDSSEN

**EXHIBIT A**

## VEXATIOUS LITIGANT LIST

Prepared and Maintained by the Administrative Office of the Courts  
 From Prefiling Orders Received from California Courts  
 (Orders prohibiting future filings entered through March 28, 2008)

LAST NAME	FIRST NAME	MIDDLE	COURT	CASE NO.	DATE	COMMENTS
BERRY	Ethan	A.	Contra Costa Superior Court	D9800245	04/13/04	
BEXTON	Alana	Poole	Kern County Superior Court	531384	12/12/95	
BHATIA	Ram	S.	Los Angeles Superior Court	PD011462	02/05/04	
BIANCHI	Alfred		San Mateo Superior Court	CIV417277	07/25/07	
BIANCHI	Lois	K.	San Mateo Superior Court	CIV417277	07/25/07	
BICKMORE	Gregory	L.	Butte Superior Court	118290	08/11/95	
BILLINGS	Christina	Gerasimos	Los Angeles (Pasadena) Muni Ct	93M05279	11/23/94	
BITTAKER	Lawrence	S.	Marin Superior Court	155223	04/20/93	
BLACK	Yvette	L.	Los Angeles Superior Court	BC061325	09/10/93	
BLEISCH	William		San Diego Superior Court	D294829	09/14/94	
BONAR	Richard	Louis	San Luis Obispo Superior Court	LC031126	04/23/04	
BORESS	Harry		Contra Costa Superior Court	C0202127	01/07/03	
BORLAND	Barbara		Los Angeles (Newhall) Muni Ct	91C02011	10/21/92	
BOTELLO	Ruben	B.	Humboldt Superior Court	92DR0221	11/02/92	
BOTHELL	Brad	E.	Santa Clara Superior Court	105CV046193	03/27/07	
BOWEN	Patricia	L.	Los Angeles Superior Court	BC088198	02/23/95	
BOWLES	John		Contra Costa Superior Court	C9501573	10/05/00	
BOYD	Anthony	H.	Kern Superior Court	51638	09/12/94	Order states specifics.
BRADFORD, H-16258	Raymond	Alford	Kings Superior Court	06C0361	08/06/07	
BRADFORD, H-16258	Raymond	Alford	Kings Superior Court	06C0360	12/07/07	
BRADLEY	Audrey		Orange County Superior Court	699626	11/17/97	
BRADLEY	Jacqueline		Alameda Superior Court	BG05223156	10/19/05	
BRANDES	Alaine		Riverside Superior Court	070405	03/08/94	Order states specifics.
BRANDES	Linnea		Riverside Superior Court	070405	03/08/94	Order states specifics.
BRAVO	Victor	J.	San Diego Superior Court	SB7515	11/17/00	
BRAZIL, JR.	Joseph	F.	Sonoma Superior Court	SCV85414	05/26/98	
BRELAND, JR.	Frank		San Diego Superior Court	708311	12/15/97	
BROADNAX	Lawrence		Los Angeles Superior Court	BC214701	05/15/01	
BRODEUR	Mona	Theresa	San Mateo Superior Court	F012037	07/30/93	
BRODEUR	Mona	Theresa	San Mateo Superior Court	384113	07/30/93	
BRODEUR	Mona	Theresa	San Mateo Superior Court	384114	07/30/93	
BRODEUR	Mona	Theresa	San Mateo Superior Court	F011422	07/14/93	
BROSINAN	John		Contra Costa Superior Court	C9501573	10/05/00	

Vexatious Litigant List  
 BOLD = Added names

## VEXATIOUS LITIGANT LIST

Prepared and Maintained by the Administrative Office of the Courts  
 From Prefiling Orders Received from California Courts  
 (Orders prohibiting future filings entered through March 28, 2008)

LAST NAME	FIRST NAME	MIDDLE	COURT	CASE NO.	DATE	COMMENTS
BROSANAN	John		Contra Costa Superior Court	C0303021	11/04/03	
BROSANAN	John		Contra Costa Superior Court	C0400329	04/14/04	
BROW	Jennifer	A.	Kern (Bakersfield) Municipal Ct	109705	09/04/98	Order states specifics.
BROW	Richard	J.	Kern (Bakersfield) Municipal Ct	109705	09/04/98	Order states specifics.
BROWN	Joyce	Willes	Court of Appeal, 2nd Dist, Div 5	B080364	07/07/94	
BROWN	Sherwood		San Diego Superior Court	703585	03/21/97	
BROWN, II	William	Odessa	Monterey Superior Court	M82457	08/08/07	
BROWNING	Howard		Los Angeles Superior Court	BC016615	10/28/94	
BRYANT	David	L.	Sacramento Superior Court	JC2081	08/05/96	
BUCHANAN	Andrew		San Bernardino Superior Court	BVFHS01508	01/26/06	
BURKE	Sherry		Sonoma Superior Court	180076	10/21/94	
BURNS	Julia		Shasta Superior Court	01CV0089	03/29/02	
BURRELL	Roger	W.	Los Angeles Superior Court	BC085778	02/23/94	
BURUGA	Gabriel		Orange County Superior Court	05CC12637	01/31/06	
CAIN	Inventor	Daryl	San Diego Superior Court	SC595575	09/18/91	
CAIN	Reverend	Daryl	San Diego Superior Court	SC595575	09/18/91	
CAIN	Daryl		San Diego Superior Court	SC595575	09/18/91	
CALDERON LOPEZ	Ricardo	J.	Los Angeles Superior Court	SC088518	05/26/06	
CALLAHAN	Sherry		Sonoma Superior Court	180076	10/21/94	
CAMPBELL	Carmen	E.	Los Angeles Superior Court	NC026096	10/28/99	
CAMPBELL	Evangelist	Maggie	Los Angeles (Newhall) Muni Ct	PC030977	03/28/03	
CAMPBELL	Larry	W.	Placer Superior Court	SDR7097	01/30/02	
CAMPBELL	Larry	W.	Placer Superior Court	SCV15460	07/08/04	
CAMPBELL	Maggie		Los Angeles (Newhall) Muni Ct	PC030977	03/28/03	
CAMPBELL	Stuart		Los Angeles Superior Court	BC038368	04/15/92	
CAMPBELL-SMITH	Anne		Los Angeles Superior Court	BC038368	04/15/92	
CAMPOS-RIEDEL	Sofia		Placer Superior Court	SDR10354	02/23/07	
CARDAN	Cyrus		Los Angeles Superior Court	BC103383	01/06/95	
CARDINALI	Vincent		Santa Clara Superior Court	507SC002040	08/02/07	Also see A&R Towing, Inc.
CARLSON	Patricia	J.	Madera Superior Court	CV10882	04/27/01	
CARMICHAEL	Gina	D.	Sacramento Superior Court	02AS06090	09/23/05	
CARREA, JR.	Christopher		San Diego Superior Court	727411	06/25/99	
CARRILLO	Alberto		Alameda Superior Court	H273431	03/12/02	

Vexatious Litigant List  
 BOLD = Added names

**EXHIBIT B**



INSURANCE CLAIMS FILED BY JOHN BROSNAN

<u>Date of Loss</u>	<u>Carrier</u>	<u>Nature of Claim</u>
12/7/02	Bristol West. Ins.	Unknown Injury.
3/21/03	Allied Mutual Ins.	Left Wrist Strain
5/5/03	Royal Indemnity Co.	Left wrist, elbow.
5/5/03	C/O Crawford & Co.	Neck and back.
12/12/03	Progressive Ins.	Neck, back, right side of body/head.
3/27/04	21 <sup>st</sup> Century Ins.	Cut on rt. wrist, sprain of rt wrist.
5/17/04	Allstate Ins. Co.	Wrist, left side sore.
5/17/04	Farmers Ins.	Sprained left wrist.
6/29/04	Farmers Ins.	Wrist.
1/27/05	Clarendon Ntl. Ins.	Wrist
2/21/06	Clarendon Ntl. Ins.	Wrist.
5/20/06	Allstate Ins. Co.	Unknown Injury.

1	2/16/07	Lincoln General Ins.	Truck damage and theft of equip.
2			
3	5/12/07	John Brosnan	
4		Coast Ntl. Ins.	Personal injuries.
5			
6	5/12/07	State Farm	Rt. Wrist, neck and property damage.
7			
8	6/13/07	Farmers	Both wrists, back, neck.
9			
10	6/7/07	Travelers Indemnity Co.	Unknown injury.
11			
12	9/16/07	Zurich American	Believes swallowed sliver of glass.
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**EXHIBIT C**



**EXHIBIT D**

Name:	CINCINNATI TIME OF NORTHERN CALI	Phone:	(925) 937-5550		
Name:	FREMONT BANK	Phone:	(925) 941-1510		

**1870 ARNOLD INDUSTRIAL PL CONCORD, CA 94520**

12 phone numbers found, only first 10 listed.

Name:	CHOCOLATE MADDNESS	Phone:	(925) 609-1300		
Name:	EASTER SEALS EARLY INTERVENTION	Phone:	(877) 372-2023		
Name:	FLYNN PLUMBING INCORPORATED	Phone:	(925) 687-9701		
Name:	HJB HOSES AND FITTINGS	Phone:	(925) 363-5500		
Name:	LASER PRINTING SERVICES	Phone:	(925) 689-1101		
Name:	LEVY ZAX CONST	Phone:	(925) 825-8254		
Name:	NATIONAL MEDIA SYSTEMS	Phone:	(925) 676-0507		
Name:	NEXT LEVEL NETWORKS	Phone:	(925) 671-5474		
Name:	PUBLIC STORAGE	Phone:	(925) 680-1902		
Name:	W & R INDUSTRIAL PRODUCTS	Phone:	(925) 602-9700		

**3817 SAN PABLO DAM RD 216 RICHMOND, CA 94803**

Name:	BRIAN K LINEBARGER CCPS	Phone:	(925) 975-7872		
Name:	FASHION HOUSE	Phone:	(510) 222-2230		

**Possible Real Property Ownership and Deed Transfers**(4 Records) [Top](#)**3321 VINCENT RD PLEASANT HILL, CA 94523**

Owner Name:	BROSAN JOHN	County:	CONTRA COSTA
Assess State:	California	Type:	PUD
Parcel Number:	4064920103	Recorded Date:	12/19/2003
Short Legal Description:	T04876 L0050 B	Book:	
Document Number:		Page:	
Situs Address:	10 PLATEAU CT HERCULES, CA 94547 -1427		
Mailing Address:	3321 VINCENT RD PLEASANT HILL, CA 94523 -4332		
Assessment Year:		Tax Year:	2003
Assessed Land Value:	\$ [REDACTED]	Market Land Value:	
Assessed Improvements:	\$ [REDACTED]	Market Improvements:	
Total Assessed Value:	\$ [REDACTED]	Total Market Value:	
Most Recent Sale:		Prior Sale Price:	\$ [REDACTED]

**California Deed Transfer Records - County of: CONTRA COSTA**

Parcel Number: 4064920103  
 Legal Desc:  
 Sale Price: